

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ALLEN CARVALLO,

Defendant and Appellant.

H033914

(Santa Clara County

Super. Ct. No. CC815066)

Pursuant to a negotiated plea, Michael Carvallo (defendant) pleaded no contest on December 22, 2008, to one count of theft or embezzlement of over \$400 from an elder adult (Pen. Code, § 368, subd. (d)); one count of check forgery (Pen. Code, § 470, subd. (d)); and one count of concealing or withholding stolen property (Pen. Code, § 496, subd. (a)). In exchange for his pleas, the defendant was promised that two remaining counts would be dismissed—one count of grand theft (Pen. Code, §§ 484-487, subd. (a)); and one count of possession of controlled substance paraphernalia (Health & Saf. Code, § 11364.) Further, he was promised his sentence would be 60 days, "top bottom."

On January 30, 2009, the court imposed the negotiated sentence. Thereafter, on February 18, 2009, defendant filed a notice of appeal challenging events based on the sentence or matters occurring after the plea.

We appointed counsel to represent defendant in this court. Counsel filed an opening brief that stated the facts, but raised no specific issues.

On May 21, 2009, we notified defendant of his right to submit written argument on his own behalf within 30 days. To date, we have not received a response from defendant.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we provide "a brief description of the . . . procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed." (*Id.* at p. 110.) We have included information about aspects of the trial court proceedings that might become relevant in future proceedings. (*Id.* at p. 112.)

#### *Facts*

There was no evidentiary hearing in this case. Further, it appears that defendant may have waived referral to the probation department, as the record does not contain a probation report. Accordingly, the facts of defendant's underlying case are unknown.

#### *Procedural History*

On August 13, 2008, the Santa Clara County District Attorney filed an information in which defendant was charged with one count of theft or embezzlement of over \$400 from an elder adult (Pen. Code, § 368, subd. (d), count one); one count of grand theft (Pen. Code, §§ 484-487, subd. (a), count two); one count of check forgery (Pen. Code, § 470, subd. (d), count three); one count of concealing or withholding stolen property (Pen. Code, § 496, subd. (a), count four); and one count of possession of controlled substance paraphernalia (Health & Saf. Code, § 11364, count five).

On December 22, 2008, defense counsel represented to the court that she had reached an agreement with the prosecution to dispose of the case. In exchange for entering no contest pleas to counts one, three and four, the prosecution was prepared to

dismiss the remaining charges. The negotiated sentence was to be 60 days in county jail. Defense counsel told the court that defendant had credits from a prior offense, and that he would be "SORP'd" into a program. The balance of the jail term would be served in a weekend work program.

When the trial court imposed sentence, a representative from the New Life program was present and told the court that defendant was doing well in that program. Thereafter, the court imposed the negotiated jail term.

### *The Plea Hearing*

Before taking defendant's pleas, the court advised defendant of his privilege against self-incrimination, his right to confront his accusers and his right to trial by jury as required by *Boykin v. Alabama* (1969) 395 U.S. 238 [89 S.Ct. 1709], and *In re Tahl* (1969) 1 Cal.3d 122. Defendant freely and voluntarily waived those rights. Defendant was advised that the maximum potential sentence for the charges to which he would be entering pleas was five years and four months; that he would be placed on probation for five years; that if he violated his probation he could be sent to state prison and would be subject to a three-year period of parole when released. The court advised defendant of the possible immigration consequences of his pleas. In addition, the court advised defendant that because he was pleading no contest to a theft offense, if he committed any kind of theft offense in the future, even a petty theft, he could be charged with a felony; that there were other consequences of his pleas, including that he would have to pay a restitution fund fine and other fines and fees. Counsel stipulated that there was a factual basis for the pleas and that the complaint be deemed an information.

### *The Sentencing Hearing*

The court suspended imposition of sentence, placed defendant on three years formal probation, and imposed the negotiated 60 days in county jail. The court made a general restitution order in favor of the victims, including Washington Mutual Bank. Defendant was ordered to pay certain fines including a \$200 restitution fund fine plus

penalty assessments (Pen. Code, § 1202.4). The court imposed but suspended a probation revocation fee in the same amount (Pen. Code, § 1202.44); and imposed various other fees. The court imposed other conditions of probation including that defendant enter a substance abuse program<sup>1</sup> and have only peaceful contact with victim.

Our review of the entire record satisfies this court that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

*Disposition*

The judgment is affirmed.

---

ELIA, J.

WE CONCUR:

---

RUSHING, P. J.

---

PREMO, J.

---

<sup>1</sup> Although the possession of drug paraphernalia count was dismissed, it was subject to a *Harvey* waiver. (*People v. Harvey* (1979) 25 Cal.3d 754.)